

DEPARTMENT OF STATE REVENUE

04-20150395.LOF

Letter of Findings Number: 04-20150395
Sales/Use Tax
For Tax Years 2011-2012

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Retail business that failed to develop its argument and did not meet its burden of proof regarding its protest.

ISSUE**I. Sales/Use Tax–Burden of Proof.**

Authority: IC § 6-8.1-5-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer protests sales which Taxpayer claims were exempt were included in the proposed assessment.

STATEMENT OF FACTS

Taxpayer is a retailer operating a convenience store that sells gasoline. Taxpayer is incorporated and elected to file as an S-corporation. The Indiana Department of Revenue ("Department") conducted an audit for sales and use tax. Taxpayer protested and an administrative hearing was held; this Letter of Findings results. More facts will be provided as needed below.

I. Sales/Use Tax–Burden of Proof.**DISCUSSION**

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Taxpayer is a gas station and convenience store, the latter portion of which sold items such as soft drinks, bottled water, energy drinks, fountain drinks, cappuccino/coffee, and prepared food. The audit report also states that Taxpayer sold wine and that "[Taxpayer] was not registered to sell alcohol." Among the other items sold by Taxpayer were:

[V]arious convenience items including some exempt grocery as well as taxable items, such as, health and beauty products and candy. They also sold incense, sunglasses, USB car chargers, knit caps, tobacco products, and lottery tickets. . . . They had a deli where they prepared and sold fried foods.

The audit report also states that Taxpayer "had a single cash register where the employee manually entered the

items purchased. They did not have a bar code scanner where they could scan the item purchased into the cash register." The audit report further notes:

Audit reviewed all the information that was provided by the taxpayer; these documents included income tax returns, sales and use tax returns, bank statements, and a limited amount of vendor purchase invoices. This documentation was very limited (less than 43[percent] of the purchase invoices for the in-store inventory for one year), which was not an adequate representation of the taxpayer's cost of goods purchased for resale. No cash register tapes, daily recaps, or monthly sales summaries were provided to verify taxable sales as reported on the sales tax returns. Because of the lack of information, the audit was conducted using the IRS Audit Guide Method (Bizstats) for cash intensive businesses.

Taxpayer states that it is protesting "food sales made with food stamps" and "lottery purchases[.]" The audit report states that the "auditors met with the POA [power of attorney] and shareholders/responsible officers" and went over the audit adjustment work-papers with them. The audit report states that "Taxpayer needs to provide food stamp information along with documentation" and that lottery purchases issue was explained to Taxpayer and the POA.

Taxpayer's protest does not cite to any statutes, regulations, or cases. Taxpayer, after the hearing, was given additional time to submit a written explanation of its argument and to provide relevant supporting documentation. Taxpayer failed to provide the requested explanation and documentation. The Department finds that Taxpayer has not presented a sufficiently developed argument for the Department to address. See *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (quoting *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)).

FINDING

Taxpayer's protest is denied.

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